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AB

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

SELECTIVE INSURANCE COMPANY
OF AMERICA,

40 Wantage Avenue
Branchville, N.J. 07890

Plaintiff,

v.

TRUECARE HOME CARE SERVICES, INC.
d/b/a TRUCARE HOME CARE SERVICES,

2860 Dekalb Pike – Suite 100
Norristown, Penn. 19401

and

ASHIA NIXON,

3450 Ormes St.
Philadelphia, Penn. 19134

Defendants.

20 386

Civ. Action No.

COMPLAINT
FOR DECLARATORY JUDGMENT

Plaintiff Selective Insurance Company of America (“**Selective**”) as and for its Complaint against Defendants Truecare Home Care Services, Inc. d/b/a Trucare Home Care Services (“**Truecare**”) and Ashia Nixon (“**Nixon**”) (collectively, “**Defendants**”), states and alleges as follows:

PARTIES

1. Plaintiff Selective Insurance Company of America (“**Selective**”) is a corporation organized and existing under the laws of State of New Jersey, duly licensed and registered to transact insurance in the Commonwealth of Pennsylvania, with its principal place of business at 40 Wantage Avenue, Branchville, New Jersey 07890.

2. Defendant Truecare Home Care Services, Inc. (“**Truecare**”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 2860 Dekalb Pike – Suite 100, Norristown, Penn. 19401. Truecare is known and does business as Trucare Home Care Services.

3. Truecare is in the business of providing home health care services, including in-home health care aides for the elderly and disabled. Truecare regularly does business in Pennsylvania and in this District.

4. Defendant Ashia Nixon (“**Nixon**”) is an individual who resides at 3450 Ormes St., Philadelphia, Penn. 19134, and is a resident of the Commonwealth of Pennsylvania and this District. At the time of the relevant events alleged herein, Nixon was employed by Truecare.

JURISDICTION

5. Selective brings this declaratory judgment action pursuant to 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties, as more fully alleged herein.

6. Jurisdiction of this Court is based upon 28 U.S.C. § 1332 (diversity of citizenship). Plaintiff and all Defendants are citizens of different states and the amount in controversy exceeds \$75,000, as more fully alleged herein.

7. The Court has personal jurisdiction over Defendants because Defendant Truecare is incorporated in this Commonwealth and has its principal place of business in this District and Defendant Nixon is a resident of this Commonwealth and domiciled in this District.

8. Pursuant to 28 U.S.C. § 1391, venue is proper in this District because (i) a substantial part of the transactions and issues giving rise to Plaintiff's claims occurred in this District; and (ii) Defendant Truecare is subject the personal jurisdiction of this Court and Defendant Nixon resides and is domiciled in this District.

9. All necessary parties have been joined to this Action.

POLICY

10. Selective issued a policy of insurance to Defendant Truecare, policy number S 2326248, for the period December 10, 2017 to December 10, 2018 ("**Policy**"). A true and correct copy of the Policy is attached to this Complaint as **Exhibit A**.

11. The Policy provides insurance coverage to Truecare on the terms and conditions, and subject to the limitations and exclusions, as stated in the Policy. Nixon is or may be an additional insured under the Policy. The coverages available under the Policy include Commercial General Liability Coverage and Social Service Organization Professional Liability Coverage. Coverage under the Policy is up to \$1,000,000 per occurrence.

12. The Policy excludes coverage for bodily injury (including death) arising out of the furnishing or dispensing of drugs.

13. The Policy states and provides:

“The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage ... : ***[T]his insurance does not apply to ‘bodily injury’, ‘property damage’ or ‘personal and advertising injury’ arising out of: ... 2. The furnishing or dispensing of drugs***”

Policy, Commercial General Liability Coverage Form, CG 00 01 04 13, Section I - Coverage, Coverage A - Bodily Injury and Property Damage Liability, Exclusion – Services Provided by Health Care Providers, Form CG 22 44 04 13, sec. 2 (*emphasis added*).

14. The Policy also excludes coverage for damages (including bodily injury and death) arising out of the prescription, utilization, furnishing or dispensing of drugs.

15. The Policy states and provides:

“Exclusions. ***This insurance does not apply to ‘damages’, ‘claims’ or ‘suits’: ... a. Directly or indirectly arising out of the prescription, utilization, furnishing, or dispensing of drugs*** or medical, dental, or nursing supplies or appliances, except as directed by a physician, physician assistant, nurse, or a psychologist as permitted under state law, and in your usual and customary practice as a social service organization.

Policy, Social Service Organization Professional Liability Coverage Form, SS 00 10 10 14. Coverage 2, Exclusions e (*emphasis added*).

16. The Policy also excludes certain claims for punitive damages and contains other exclusions.

UNDERLYING ACTION

17. There is a civil action pending against Truecare and Nixon in the Pennsylvania Court of Common Pleas, Philadelphia County, Civil Trial Division, captioned *Gwendolyn D.C. Thompson, Executrix of the Estate of Katherine Jackson Canzater v. Ashia Nixon and Truecare Home Care Services, Inc.*, July Term 2018 No. 03841, Case ID 180703841 (“**Underlying Action**”). The Underlying Action has been designated a “Major Case” in the Court of Common Pleas. A true and correct copy of the Second Amended Complaint in the Underlying Action (“**Underlying Complaint**”) is attached to this Complaint as **Exhibit B**.

18. The Underlying Action contains a Cause of Action for Wrongful Death (“including the pecuniary value of support, and comfort that the decedent would have provided her family had she had lived”) and a separate Cause of Action for Survival (“damages for the conscious pain and suffering undergone [by] decedent ... up to and including the time of her death”).

19. The Underlying Complaint alleges, among other allegations: that Katherine Jackson Canzater (“**Ms. Canzater**”) was an elderly woman living with her daughter Gwendolyn D.C. Thompson (“**Ms. Thompson**”) in Wayne, Penn.; that Truecare provided home health care services to Ms. Canzater at that address; and that on or about March 16, 2018, Ashia Nixon was the Truecare employee who provided the home health care services to Ms. Canzater (Underlying Complaint paras. 8-13).

20. The Underlying Complaint further alleges, among other allegations, that:

“On or about March 16, 2018, ... [i]n the process of assisting Ms. Canzater with her medications, Defendant Ashia Nixon picked up a small blue unlabeled pill box from a different room in the house. KNOWING that this was NOT Ms. Canzater’s pill box. Ms. Nixon then provided the incorrect medications to Ms. Canzater ... these were not her medications.”

Underlying Complaint paras. 13-14 (*capitalization in original*).

21. The Underlying Complaint further alleges, among other allegations, that: as a result of taking the incorrect medications given to her by Nixon, Ms. Canzater was found unconscious, was taken to a hospital, developed hypoglycemic encephalopathy, became comatose, and died 10 days later. (Underlying Complaint paras. 17-21.)

22. Nixon gave deposition testimony in the Underlying Action confirming that she had given Ms. Canzater the wrong medicines from the wrong pill box. A true and correct copy of Ms. Nixon’s deposition testimony in the Underlying Action (“**Nixon Deposition**”) is attached hereto as **Exhibit C**.

23. In the Nixon Deposition, Nixon testified that she had placed pills from the wrong pill box on a napkin and gave them to Ms. Canzater. Nixon Deposition at 52-55 & 60-61.

24. Nixon gave deposition testimony in the Underlying Action that Truecare had a policy of *not* permitting home health aides to furnish or dispense drugs to patients or clients.

25. In the Nixon Deposition, Nixon testified, in response to a question, “What was your understanding of how you were supposed to assist a patient with medications?”:

“Well, we're not -- they tell you we are not supposed to give medicine at all. As a home health aide, we're not supposed to do that. Normally they'll tell you it is supposed to be an RN that gives it to you or a nurse that they have. But most clients don't have a nurse or RN to come in or somebody that lives with them. But if you're there and you are the only person there that can give them the medicine, I don't want to say you're allowed to do so, but, you know, they need their medicine.”

Nixon Deposition at 18.

26. The initial Complaint in the Underlying Action stated that it was seeking damages on each of the two Causes of Action (Wrongful Death and Survival) “in amount in excess of Fifty Thousand (\$50,000) Dollars,” for a total compensatory damages of at least \$100,000, in addition to Underlying Complaint also seeking punitive damages. Plaintiff in the Underlying Action has stated that its damages are at least \$1,000,000 (which is the amount of per occurrence coverage under the Policy) and that Plaintiff is seeking to recover that amount from Defendants in the Underlying Action.

COVERAGE

27. There is no coverage under the Policy for damages arising out of the events alleged in the Underlying Complaint or for any liability that may be found against Truecare or Nixon in the Underlying Action.

28. Nixon's and Truecare's actions in providing the wrong medicines to Ms. Canzater constitute “[t]he furnishing or dispensing of drugs” and “the prescription, utilization, furnishing, or dispensing of drugs,” each of which is specifically excluded from coverage under the Policy.

29. Truecare has a policy of not allowing home health care aides to give medicines to patients or clients. Nixon was aware of this Truecare policy.

21. Truecare has a Key Company Policy that provides “Home Health Aides / Direct Care Workers ARE NOT ALLOWED to administer Medications to clients,” and goes on to provide, “If a family member asks you to administer a medication, you must refuse and call the office immediately. DO NOT POUR MEDS!” A true and correct copy of the Truecare’s “Key Company Policies” signed by Nixon is attached to this Complaint as **Exhibit D-1** (Policy No. 1, *capitalization in original*).

22. In addition, Ms. Thompson (Ms. Canzater’s daughter) signed an acknowledgement on behalf of Ms. Canzater that she understood that Truecare home health aides / direct care workers “cannot administer medications to [the client]. Only reminders can be made.” A true and correct copy of the Truecare’s “Consent to Service” signed by Ms. Thompson is attached to this Complaint as **Exhibit D-2** (para. 9).

23. Nixon’s giving of the wrong medicines, or any medicines, to Ms. Canzater constitutes the giving, administration and furnishing of drugs or medicines.

24. Nixon’s giving of the wrong medicines to Ms. Canzater was not the usual and customary practice of Truecare and was against and in violation of specific Truecare policy.

25. Nixon’s giving of the wrong medicines to Ms. Canzater was not directed by any physician, physician assistant, nurse, or a psychologist (or any other person). *See* Nixon Deposition at 52-55.

26. Nixon’s giving of the wrong medicines, or any medicines, to Ms. Canzater was not permitted under state law.

27. Under applicable Pennsylvania state law, home health aides permitted activities in relation to medicines is limited to “assistance with medications that are ordinarily self-administered.” Rules And Regulations For Home Health Care Agencies 28 Pa. Code, Part IV, Health Facilities Subpart F. Chapter 601 and Subpart A. Chapter 51, § 601.35. Home health aide services. Under applicable federal regulations, such assistance with medicines by home health aides is limited to: “Assistance in administering medications in this requirement means that the [Home Health] Aide may take only a passive role in this activity. This assistance is limited to getting water or fluids for the patient to take their medication,” and does not include “removing the correct dose of medication from the container” or otherwise giving medicines to the patient or client. 42 CFR 484, Centers for Medicare & Medicaid Services Interpretive Guidelines § 484.80 (g)(3).

28. Any and all damages to Ms. Canzater, or the Estate or Ms. Canzater, arising from Nixon having given the wrong medicine to Ms. Canzater, or otherwise arising from the facts and actions alleged in the Underlying Complain, are excluded from coverage under the Selective Policy.

DISPUTE

29. Truecare made a claim to Selective for coverage under the Policy for any damages for which Truecare may be held liable arising out of the events alleged in the Underlying Action.

30. Selective, upon review of the facts alleged in the Underlying Action and the terms and conditions of the Policy, informed Truecare that there is no coverage under the Policy for damages arising out of the events alleged in the Underlying Action. Specifically,

Selective informed Truecare and Nixon that “the claims in the Second Amended Complaint are not covered by the Policy.”

31. Notwithstanding Selective’s determination that the claims in the Underlying Complaint are not covered by the Policy, Selective has offered to provide, and has provided and is paying for, a defense for Truecare and Nixon in the Underlying Action, subject to a reservation of all of Selective’s rights (including the right to recover from Truecare and Nixon any defense costs paid by Selective on behalf of Truecare and Nixon to the extent permitted by law).

32. Truecare and Nixon have each accepted the defense provided by Selective subject to this reservation of rights.

33. Truecare has disputed, and upon information and belief continues to dispute, Selective’s determination that there is no coverage under the Policy for damages arising out of the events alleged in the Underlying Action. Upon information and belief, Nixon also disputes that there is no coverage under the Policy for damages arising out of the events alleged in the Underlying Action.

34. Truecare and, upon information and belief, Nixon each contend, and Selective disputes, that Selective should be liable to Defendants for any amount they may be found to be liable for in the Underlying Action.

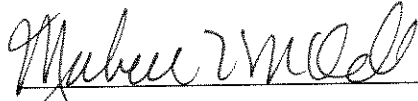
35. There exists an actual controversy between Selective and each of the Defendants as to coverage under the Policy for damages and defense costs arising out of the events alleged in the Underlying Action.

36. Accordingly, Selective seeks a determination and declaratory judgment from this Court that there is no coverage under the Policy for damages or defense costs in the Underlying Action or arising out of the events alleged in the Underlying Complaint.

WHEREFORE, Plaintiff respectfully requests that Declaratory Judgment be entered in Selective's favor declaring that: there is no coverage under the Selective Policy for Truecare or Nixon for any liability for which they may be found liable in the Underlying Action or otherwise arising out of the events alleged in the Underlying Complaint; that Selective owes no duty to indemnify Truecare or Nixon for any liability that may be found against them in the Underlying Action; that Selective owes no duty to provide a defense for Truecare or Nixon in or in relation to the Underlying Action; for the costs of this Action; and for any other and further relief that this Court may find to be just and proper.

Respectfully submitted,

KUTAK ROCK LLP



MICHAEL T. McDONNELL III

I.D. No. 60111

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ROBERT A. JAFFE

(pro hac vice to be applied for)

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January 22, 2020
Philadelphia, Pennsylvania

CIVIL COVER SHEET

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

Selective Insurance Company of America

DEFENDANTS

Truecare Home Care Services, Inc.
and Ashia Nixon(b) County of Residence of First Listed Plaintiff Sussex County NJ
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Montgomery County, Pa
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael T. McDonnell III, Kutak Rock LLP
1760 Market Street, Suite 1100, Philadelphia, PA 19103
215-299-4384

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus. <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

Diversity - 28 U.S.C. § 1332

Brief description of cause
Insurance coverage declaratory judgment action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
Declaratory judgmentCHECK YES only if demanded in complaint
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE n/a

DOCKET NUMBER

DATE
01/22/2020SIGNATURE OF ATTORNEY OF RECORD
/s/ Michael T. McDonnell

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

JAN 22 2020

JAN 22 2020

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(To be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 40 Wantage Ave, Branchville, N J 07890

Address of Defendant: 2860 Dekalb Pike, Norristown, Penn. 19401 and 3450 Ormes St., Philadelphia, Penn 19134

Place of Accident, Incident or Transaction: 2860 Dekalb Pike, Norristown, Penn. 19401 and/or 240 Highland Ave., Wayne, Penn 19087

RELATED CASE, IF ANY:

Case Number: n/a Judge: Date Terminated:

Civil cases are deemed related when 'Yes' is answered to any of the following questions

- | | | | |
|---|---|------------------------------|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above

DATE 01/22/2020

Michael T. McDonnell III
Attorney-at-Law / Pro Se Plaintiff

ID No 60111

Attorney ID # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1 Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2 FEHA
- ☐ 3 Jones Act- Personal Injury
- ☐ 4 Antitrust
- ☐ 5 Patent
- ☐ 6 Labor-Management Relations
- ☐ 7 Civil Rights
- ☐ 8 Habeas Corpus
- ☐ 9 Securities Act(s) Cases
- ☐ 10 Social Security Review Cases
- ☐ 11 All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

- ☒ 1 Insurance Contract and Other Contracts
- ☐ 2 Airplane Personal Injury
- ☐ 3 Assault, Defamation
- ☒ 4 Marine Personal Injury
- ☐ 5 Motor Vehicle Personal Injury
- ☐ 6 Other Personal Injury (Please specify) _____
- ☐ 7 Products Liability
- ☐ 8 Products Liability - Asbestos
- ☐ 9 All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Michael T. McDonnell III, counsel of record or pro se plaintiff, do hereby certify

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☒ Relief other than monetary damages is sought

DATE 01/22/2020

Michael T. McDonnell III
Attorney-at-Law / Pro Se Plaintiff

ID No 60111

Attorney ID # (if applicable)

NOTE A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

JAN 22 2020

AB

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Selective Insurance Co. of America

V.

Truecare Home Services Inc., et al.

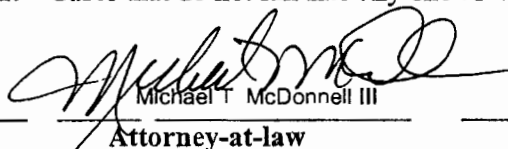
CIVIL ACTION

20 386
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

Jan. 22, 2020	 Michael T. McDonnell III	Plaintiff
Date	Attorney-at-law	Attorney for
215-299-4384	215-981-0719	michael.mcdonnell@kutakrock.com
Telephone	FAX Number	E-Mail Address

(Civ 660) 10/02

JAN 22 2020